



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII
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August 31, 2017

Dr. Jubal C. Yennie, Superintendent
Albany County School District #1
1948 Grand Avenue
Laramie, WY 82070-4317

Re: Albany County School District #1
OCR Case Number: 08-16-2135

Dear Dr. Yennie:

We are writing to advise you of the resolution of the above-referenced complaint that was filed with our office against Albany County School District #1 (District). The Complainant alleged that, and OCR investigated whether, the District discriminated on the basis of sex. Specifically, OCR investigated whether the District fails to promptly and equitably respond to complaints, reports and/or incidents of sexual harassment and violence of which it has notice.¹

The Office for Civil Rights (OCR) of the U.S. Department of Education (Department) is responsible for enforcing Title IX of the Education Amendments of 1972 and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in education programs and activities that receive Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department, the District is subject to this law and regulation.

During our investigation, we interviewed the Complainant, District staff, and District students; reviewed evidence provided by the Complainant and the District; and conducted an on-site visit in November 2016. During the course of our investigation, the District indicated its desire to voluntarily enter into an agreement to resolve those allegations pursuant to Section 302 of our *Case Processing Manual*. We reviewed this request and determined that it was appropriate to enter into an agreement without completing a full investigation. This letter details Title IX's legal standards, the status of our investigation prior to receiving the District's request to enter into an agreement to resolve the allegations in this case, and the reasons for our determinations that an agreement pursuant to Section 302 of our *Case Processing Manual* was appropriate in this case.

¹ OCR also initially opened an investigation into the Complainant's allegations related to the District's response to (1) the Complainant's XXX (Student) report in XXX 2016 that a fellow student had sexually assaulted her, and (2) alleged subsequent sexual harassment of the Student related to the underlying incident. The Complainant and District participated in Early Complaint Resolution that resulted in an agreement that resolved these individual allegations, but left open OCR's systemic investigation.

I. Legal Standards & OCR'S Investigation

A. Notice of Non-discrimination (34 C.F.R. § 106.9)

The Title IX implementing regulation, at 34 C.F.R. § 106.9, requires a recipient to implement specific and continuing steps to notify all applicants for admission and employment, students and parents, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of sex in its education programs or activities, and that it is required by Title IX not to discriminate in such a manner. The notice must also state that questions regarding Title IX may be referred to the recipient's Title IX coordinator or to OCR.

OCR's investigation found that the District has published a Notice of Non-discrimination. The notice is primarily published in the handbooks that the District has for each of its schools, but the text of the notice is not uniform across published locations and, in some cases, omits OCR's contact information. OCR has not reached a determination as to whether such notice is sufficient under 34 C.F.R. § 106.9. In the Resolution Agreement, the District has agreed to widely disseminate a uniform, compliant Notice of Non-discrimination that includes contact information for the District's current Title IX Coordinator and for OCR.

B. Title IX Coordinator (34 C.F.R. § 106.8(a))

The Title IX implementing regulation, at 34 C.F.R. § 106.8(a), requires that a recipient designate at least one employee to coordinate its responsibilities to comply with and carry out its responsibilities under that law. The recipient is further required, by the Title IX implementing regulation at 34 C.F.R. § 106.8(a), to notify all students and employees of the name (or title), office address, and telephone number of the designated employee(s).

The Complainant alleged that the District had no Title IX Coordinator in XXX 2016. The District responded that it did, and the individual was its Assistant Superintendent for Human Resources and Quality Learning. In any event, OCR's investigation established that in approximately July 2016, the District's Director of State and Federal Programs took over as Title IX Coordinator. As described above, OCR has not reached a compliance determination as to the District's sufficiency of notification, but in the Resolution Agreement, the District has agreed that its Notice of Non-discrimination will notify all students and employees of its Title IX Coordinator's contact information, including email address.

C. Grievance Procedures (34 C.F.R. § 106.8(b))

The Title IX regulation, at 34 C.F.R. § 106.8(b), requires recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints alleging any action that would be prohibited by Title IX, including sexual harassment and sexual assault. Title IX does not require a recipient to provide separate grievance procedures for sexual harassment complaints, including sexual assault complaints. A recipient may use student disciplinary or other separate procedures for these complaints; however, any procedures used to

adjudicate complaints of sexual harassment or sexual assault, including disciplinary proceedings, must afford the complainant a prompt and equitable resolution.

OCR examines a number of factors in evaluating whether a recipient's grievance procedures are prompt and equitable, including whether the procedures provide for the following: notice of the procedure to students, parents, and employees, including where to file complaints; application of the procedure to complaints alleging discrimination by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for major stages of the complaint process; notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects.

At the outset of OCR's investigation, the District had three relevant policies and, for example, used a "blend" of the three to investigate the Complainant's allegations. Throughout OCR's investigation, the District emphasized that it was reworking its policies, and in May 2017, the District adopted a substantially revised Title IX policy, Policy 4020 Sexual Harassment and Discrimination of Students. OCR does not have any compliance concerns with the text of the policy and will not require any revisions to the text, but given the policy's newness, the Resolution Agreement will require reporting as to implementation of the policy, including the District's efforts to notify and provide training on the policy, and as to complaints received under the new policy during the 2017-2018 school year.

D. Response to Reports of Sex Discrimination, including Sexual Harassment and Sexual Violence (34 C.F.R. § 106.31)

The Title IX regulation at 34 C.F.R. § 106.31 provides generally that no person shall on the basis of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination in education programs or activities operated by recipients of Federal financial assistance. Sexual harassment of student(s) that creates a hostile environment can result in the denial or limitation, on the basis of sex, of students' ability to participate in or receive education benefits, services, or opportunities and thereby violate Title IX.

Under the Title IX and the regulations, once a school district has notice of potential sexual harassment of student(s), it is responsible for determining what occurred and responding appropriately. The district is not responsible for the actions of a harassing student, but rather for its own discrimination in failing to respond adequately. A school district may violate Title IX and the regulations if: (1) the district knew or reasonably should have known about potential harassment on the basis of sex; and (2) failed to take prompt, thorough, and effective responsive action. These duties are the district's responsibility, regardless of whether a student has complained, asked the district to take action, or identified the underlying conduct as a form of discrimination.

OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt, thorough, and effective. What constitutes a reasonable response will differ depending upon the circumstances. However, in all cases the district must conduct a prompt, thorough and impartial

inquiry designed to reliably determine what occurred and if a hostile environment existed for the complainant(s) or others.

Whether a hostile environment based on sex exists depends on all the circumstances, including the degree to which the misconduct affected one or more students' education; the type, frequency, and duration of the misconduct; the identity of and relationship between the alleged harasser and the subject(s) of the harassment; the number of individuals involved; the age and sex of the alleged harasser and the subject of the harassment, the size of the school or district, location of the incidents, and the context in which they occurred; and other incidents at the school or district. The more severe the conduct, the less the need to show a repetitive series of incidents; this is particularly true if the harassment is physical. A single or isolated incident of sexual harassment may, if sufficiently severe, create a hostile environment. For example, a single instance of rape is sufficiently severe to create a hostile environment. Ultimately, a district, and OCR, must determine whether the hostile environment was sufficiently serious or pervasive to deny or limit, on the basis of sex, students' ability to participate in or receive education benefits, services, or opportunities.

If the district finds that a hostile environment existed, it should take reasonable, timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation. The response must be designed to stop the harassment, eliminate the hostile environment, and remedy the effects of the harassment on the student who was harassed. The district must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate. A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment.

Other actions may be necessary to repair the educational environment. These may include special training or other interventions, the dissemination of information, new policies, and/or other steps that are designed to clearly communicate the message that the district does not tolerate harassment and will be responsive to any student reports of harassment. The district should also take steps to prevent any retaliation against the student who made the complaint or those who provided information.

At this stage of OCR's investigation, after requesting and reviewing three years' worth of reports of discrimination, harassment, bullying, and violence based on sex, interviewing multiple principals, assistant principals, and SROs across the District (including about specific reports), and conducting student focus groups and reviewing relevant records in person on-site, OCR does not have any information alleging or otherwise seeming to involve an inappropriate response to any type of sex discrimination, harassment, bullying, or violence (other than the Complainant's allegations, which have been resolved). Additionally, because the Complainant alleged that the Student's school had notice of prior instances of the accused student engaging in sexually inappropriate behavior with other female students, OCR investigated this issue. OCR reviewed the accused student's records and other records and data from the school, and interviewed witnesses as to this issue. OCR found no evidence that the school had notice of prior instances of the accused student engaging in sexually inappropriate behavior with other female students.

Therefore, OCR has determined that no individual remedies for students are warranted in the Resolution Agreement, though via the Resolution Agreement, the District will report on, and OCR will monitor, future individual complaints for the 2017-2018 school year.

At a systemic level, the information OCR has gathered so far suggests that certain elements of the District's response to reports of sex discrimination could be improved, some of which have already been addressed by the District in its new Policy 4020. Specifically, in the Resolution Agreement, the District has agreed to the following, each of which represents a specific area OCR has identified for improvement:

- Provide staff training on the new provisions of Policy 4020 that contain a broader definition of "school," require investigations to "consider the effect of off-campus conduct when evaluating whether there is a hostile environment on campus," and require compliance with Wyoming mandatory reporting law;
- Revising disciplinary policies and procedures to provide a uniform definition of harassment that aligns with the District's definition in its Policy 4020, Sexual Harassment and Discrimination of Students;
- Provide staff training on the different types of disciplinary categories and their uses, as well as reviewing specified categories to compile its reporting as to future individual complaints for the 2017-2018 school year;
- Comprehensively reporting on all incidents of alleged discrimination, harassment, bullying, or violence based on sex against students by fellow students, staff, or third parties for the 2017-18 school year, including all incidents that (1) resulted in reports under the District's Policy 4020, Sexual Harassment and Discrimination of Students, and Policy 4021, Prohibiting Harassment, Intimidation, and Bullying; (2) included disciplinary consequences coded as "sexual harassment" or "sexual offenses," as well as "bullying," "cyberbullying," "minor offenses," "other major offenses," "threat/intimidation," "disorderly conduct," "harassment, non sexual" for any student involved; (3) included referrals to, or other communications with, law enforcement; (4) were logged at the school level and not included elsewhere.

II. Resolution Agreement Pursuant to Section 302 of OCR's Case Processing Manual

OCR determined that a Resolution Agreement pursuant to Section 302 of our *Case Processing Manual* is appropriate here, in light of the facts that (1) though OCR has not yet reached a compliance determination as to any issues in this case, OCR's review of voluminous evidence has not revealed widespread or obvious District-wide problems, but has revealed some areas where improvements could potentially be made, and (2) the District has made many changes from the start of the 2015-16 school year (which was before this investigation was opened) to the present, which, in general, have enhanced the District's Title IX program. At this stage, OCR has determined that it is in both the District's and Complainant's interests to resolve this systemic allegations in this case through a Resolution Agreement, as doing so will provide a resolution to this case for both parties and will allow OCR to continue to work with the District as it implements its new Title IX policy and takes other actions that ultimately will allow OCR to make a determination that the District is in compliance with Title IX.

III. Conclusion

We thank the District for being willing to voluntarily address the issues raised in this case. A copy of the signed Resolution Agreement is enclosed for your records. When the Agreement is fully implemented, the allegations will be resolved consistent with the requirements of Title IX and its implementing regulations. OCR will monitor implementation of this Agreement through periodic reports demonstrating that the terms of the Agreement have been fulfilled. We will provide written notice of any deficiencies regarding implementation of the terms of the Agreement and will promptly require actions to address such deficiencies. If the District fails to implement the Agreement, we will take appropriate action, as described in the Agreement.

This concludes OCR's investigation of this complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The case is now in the monitoring phase. The monitoring phase of this case will be completed when OCR determines that the District has fulfilled all terms of the Agreement. When the monitoring phase of this case is complete, OCR will close this case and will send a letter to the District, copied to the Complainant, stating that this case is closed.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file a complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personal information, which if released, could constitute an unwarranted invasion of privacy.

Thank you for the courtesy and cooperation you and your staff and counsel extended to us during the investigation of this case. If you have any questions, please contact XXX.

Sincerely,

/s/

XXX

Supervisory General Attorney

Enclosure – Resolution Agreement

cc (w/enclosure): XXX, counsel for District

cc (w/o enclosure): XXX, Wyoming Department of Education